

EXHIBIT 5

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UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF NEW YORK
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LEONID TREYGER,

PLAINTIFF,

-against- Case No.:
23-cv-2099-HG

GIO WINE & SPIRITS CORP, GBA 526 LLC,

DEFENDANTS.
-----X

DATE: December 29, 2023
TIME: 10:18 a.m.

VIRTUAL DEPOSITION of the Defendant,
Given by a Witness, HANY DEMETRY, taken by
the Plaintiff, pursuant to a Court Order,
and to the Federal Rules of Civil Procedure,
before Madeline Tavani, a Stenographic
Reporter and Notary Public of the State of
New York.

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A P P E A R A N C E S:

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* * *

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2 City Department of Transportation rule that
3 applies to this situation that was not
4 considered in making your conclusion, that
5 would affect the validity of your
6 conclusion, correct?

7 A. Correct.

8 Q. Okay. Now you mentioned that you
9 went to the site, yes?

10 A. Correct, yes.

11 Q. You did a site survey, correct?

12 A. Yes.

13 Q. You did it on November 7th, 2023?

14 A. Yes. Yes, correct.

15 Q. You did it at the location of
16 48-101 108th Street, Corona, New York,
17 correct?

18 A. Corona, correct.

19 Q. That's the site of Gio Wine &
20 Spirits Corp, correct?

21 A. Correct, yes.

22 Q. A liquor store?

23 A. It is a liquor store, yes.

24 Q. Okay. You're on-site survey
25 confirmed it's a liquor store, correct?

1
2 until 2015. So that's, like, 13-plus or 14
3 years.

4 Q. Okay. And what about as a
5 registered architect, measuring to see if
6 sites were ADA complaint, how many years?

7 A. Eight and a half years.

8 Q. Eight and a half. Okay.

9 When you went out to the site, did
10 you make yourself a checklist of what you
11 wanted to measure?

12 A. I didn't create a checklist. I
13 then went over it. I measured like any
14 other site that we measure. Just go in and
15 see what's happening and what do we need
16 from the site. And I do the determination
17 and measure whatever I need from the site.

18 Q. You said you did or did not create
19 a checklist? I didn't hear.

20 A. I did not write a checklist, but I
21 would have a checklist of things that I
22 would need if I'm drafting this back in the
23 office. So I did not write down a
24 checklist.

25 Q. I'm asking, when you're on-site,

1

2 A. Yes.

3 Q. For those seven days before coming
4 here, did you think that you would be asked
5 about those measurements?

6 A. No. Because whatever is noted on
7 the report is what was measured.

8 Q. Okay. So you're saying your
9 measurements are in the report. Is that
10 what you're saying?

11 A. There are measurements in the
12 report, and there are measurements of the --
13 the report that was presented from the
14 other -- from the people who was raising the
15 complaint.

16 Q. Did you rely upon the measurements
17 of Marcia Eskenazi, architect who was hired
18 by the plaintiff, Leon Treyger, in this
19 action?

20 A. No. Except for the proposed ramp
21 that they had presented on their report,
22 that's --

23 Q. Okay.

24 A. -- being considered as --

25 Q. So you took down 20 to 30

1

2 Q. Okay. And it had no relevance?

3 A. Yes, it had no relevance.

4 Q. Okay. Now, would you agree with
5 me that -- let me -- I'm sorry. Let me
6 withdraw that.

7 In your experience, have you ever
8 designed ramps for store entrances in New
9 York City?

10 A. Yes.

11 Q. Have you ever designed them for
12 the purposes of being ADA-complaint?

13 A. Yes.

14 Q. Have you ever designed them for
15 corner stores?

16 A. Yes.

17 Q. Have you ever designed a corner
18 store where the ramp would go to a corner
19 and then wrap around that corner?

20 A. No.

21 Q. Are you aware that some ramps may
22 be approved by New York City Buildings
23 Department to wrap around a corner?

24 A. They may be approved, but not as a
25 right.

1

2 a ramp that wraps around the corner of an
3 existing store, correct?

4 A. Yeah, yeah. If they have to do it
5 for the ramp to wrap around a building, yes.

6 Q. So when you say "sidewalk traffic
7 capacity," what does that mean?

8 A. How many pedestrians are using the
9 corner; how many pedestrians are waiting for
10 a bus; how many pedestrians cross in each
11 direction; how many pedestrians come in a
12 certain direction heading to a train
13 station; how many of them are coming back
14 from work; traffic lights.

15 Because this -- we're killing a
16 good chunk of the corner of the intersection
17 by creating a turnaround landing, change of
18 direction. And that's where it doesn't get
19 approved, it doesn't get anywhere. It's
20 not -- it doesn't work. Nobody does it, it
21 don't work.

22 Q. When you say "sidewalk traffic
23 capacity," you said the number of people
24 walking on the sidewalk, correct?

25 A. Yes.

1

2 Q. Does that -- does that also
3 include an analysis of how many people can
4 fit on the sidewalk or walk on the sidewalk?

5 A. Most likely, yes. I'm not an
6 expert on this analysis, so I cannot answer
7 definite answers on how to do traffic
8 analysis on sidewalks.

9 Q. Well --

10 A. It's not a standard approval.
11 It's not a -- it's not an as-of-right
12 approval. This is a very special case,
13 and --

14 Q. Okay.

15 A. -- it needs special approval.

16 Q. So. Okay. So, you're aware that
17 the Department of Transportation gets
18 involved of evaluating the sidewalk traffic
19 capacity, and they want to evaluate: Is
20 there enough room on the sidewalk to
21 accommodate a ramp? Is that what they want
22 to do?

23 A. I guess so, yes. That's what they
24 analyze it for. Can you fit a ramp and its
25 landings on this sidewalk?

1

2 Q. Okay. And to determine -- for the
3 Department of Transportation to determine if
4 it could fit a ramp and its landing on a
5 sidewalk, does that require measuring the
6 length and width of the sidewalk?

7 A. Yes, of course.

8 Q. Okay.

9 A. It does.

10 Q. The width of the sidewalk is
11 relevant to determining how many people can
12 fit on the sidewalk if there's a ramp,
13 correct?

14 A. Correct.

15 Q. So -- so measuring -- I'm sorry.

16 To create a ramp that wraps around
17 a corner of a building, would you agree with
18 me that it's important to know how many
19 people can fit on that sidewalk where you're
20 wrapping around the ramp?

21 A. Yes. It will be important to know
22 how many pedestrians are on the sidewalk.

23 Q. Right. And also, how much room
24 there is on the sidewalk for those
25 pedestrians to fit, correct?

1

2 ramp, correct?

3 A. Correct.

4 Q. And they evaluate what is the

5 remaining space on the sidewalk for

6 pedestrians, right? From the ramp to the

7 curb, correct?

8 A. Correct.

9 Q. And if the Department of

10 Transportation determines there's sufficient

11 space on the sidewalk for both the ramp and

12 pedestrians, the Department of

13 Transportation can provide approval for

14 building this ramp, correct?

15 A. They provide recommendation.

16 Q. Okay. And they may provide a

17 recommendation, correct?

18 A. Correct.

19 Q. And when you say "a

20 recommendation," meaning it's okay with the

21 Department of Transportation if they find

22 there's enough space on the sidewalk,

23 correct?

24 A. Yes, correct.

25 Q. And the Department of

1

2 Transportation issues a written
3 recommendation?

4 A. In this case, yes. They do issue
5 a written recommendation.

6 Q. So if there's a proposed plan to
7 build a ramp, a wraparound corner ramp, the
8 Department of Transportation, after
9 reviewing the plans, may provide a
10 recommendation that it's okay with the
11 Department of Transportation to move forward
12 with building such ramp, correct?

13 A. Yes, correct.

14 Q. Provided there's a measurement
15 that there's sufficient space on the
16 sidewalk, correct?

17 A. Yes, correct.

18 Q. And that measurement is from the
19 ramp to the curb to see if there's
20 sufficient space, correct?

21 A. Yes, correct.

22 Q. And that measurement the
23 Department of Transportation wants to
24 investigate is also how much space is there
25 from the building line to the curb, correct?

1

2 A. Yes, correct.

3 Q. When you first received Marcia
4 Eskenazi's proposed ramp drawing for this
5 matter, did you look and see how wide her
6 ramp was proposed to be on 48th Avenue?

7 A. Yes, I did.

8 Q. And when you first saw her drawing
9 7 to 10 days before writing your report, did
10 you recognize that she had proposed a
11 44-inch-wide ramp?

12 A. Yes.

13 Q. And did you recognize that, at the
14 time, that to go forward with building this
15 ramp, a recommendation from the Department
16 of Transportation may be required?

17 A. Yes. I know that if we are
18 looking to go this variance approval, then a
19 recommendation from the Department of
20 Transportation will be required, yes.

21 Q. So it's a particular name of a
22 recommendation that you ask for? It's
23 called "variance," is that what you're
24 saying?

25 A. Yes. Anything that is not

1

2 this option. Your words, correct?

3 A. Someone -- can you say that again?

4 Q. When you saw -- when you saw

5 Marcia Eskenazi's proposed ramp, that --

6 A. Yes.

7 Q. -- would go along the side of 48th

8 Avenue of the store Gio liquors or in the

9 building 4801 108th Street --

10 A. Yes.

11 Q. -- at that time, when you saw her

12 proposal seven to ten days before writing

13 your report, you recognized: One, that it

14 would require a variance from the Department

15 of Transportation, correct?

16 A. Correct.

17 Q. Two, that her ramp was 44 inches

18 wide on the 48th Avenue side, correct?

19 A. Correct.

20 Q. Okay. Three, to get a

21 recommendation from the Department of

22 Transportation for this proposed ramp, a

23 measurement would need to be taken of how

24 much space would be remaining on the

25 sidewalk of 48th Avenue from the ramp to the

1

2 curb, correct?

3 A. Correct.

4 Q. And the Department of

5 Transportation would be interested in such

6 measurement in order to approve a variance

7 for purposes of the ramp?

8 A. Correct.

9 Q. So that measurement of the

10 building line to the curb is important to

11 the Department of Transportation in whether

12 to issue a variance, correct?

13 A. Correct.

14 Q. And that meant from the wraparound

15 ramp -- and we're talking about the ramp

16 portion on 48th Avenue -- the measurement of

17 44 inches is important to the Department of

18 Transportation to determine if it can

19 approve a variance for that ramp, correct?

20 A. Yes, correct. The 44 inches is

21 important.

22 Q. And the additional measurement

23 of -- after you go 44 inches from the

24 building line, the Department of

25 Transportation would also be interested in

1

2 the measurement from the proposed ramp on
3 48th Avenue, how much distance is there from
4 the proposed ramp to the curb line, correct?
5 The Department of Transportation is also
6 interested in that measurement?

7 A. Correct. But they don't take it
8 from me. They don't need me to measure.
9 They're not going to accept it if I measure.

10 Q. I'm just saying --

11 A. -- assumption that we're going to
12 the Department of Transportation. They
13 wouldn't take my measurement of the
14 sidewalk.

15 Q. Well, Mr. Demetry, I'm asking you,
16 you agree with me that the Department of
17 Transportation --

18 A. Well, they --

19 Q. -- is interested -- is interested
20 in those measurements?

21 A. Yes, yes.

22 Q. And it's relevant to the
23 Department of Transportation if they're
24 going to approve a variance for building a
25 ramp on 48th, Avenue, correct?

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2 (Whereupon, a short break was taken.)

3 BY MR. BERKE:

4 Q. In your report, Plaintiff's 1, you
5 wrote that you -- I'm sorry. You wrote that
6 you have to make a determination whether or
7 not the ramp leading to the entrance for the
8 store Gio liquors is accessible for disabled
9 people?

10 A. No. Say that again. We need to
11 determine if it's -- if this ramp is
12 accessible?

13 Q. Well, let me rephrase it.

14 Did you determine -- did you make
15 a determination based on your measurements
16 that the -- whether or not the ramp in front
17 of the store, Gio liquors, is accessible for
18 disabled people?

19 A. Yes. We made a determination that
20 it's not accessible to people with
21 wheelchairs.

22 Q. Okay. And aside from people with
23 wheelchairs, how about people with walkers?
24 Is it also not accessible for people with
25 that type of disability?

1

2 states, correct?

3 A. Yes.

4 Q. And so the ADA states that a slope
5 ramp should be 1:12, in that ratio.

6 Correct?

7 A. Correct.

8 Q. And the ratio of this ramp is 2
9 to -- is what? 1:24?

10 A. It has different slopes, but the
11 steepest has like 2 1/4 inch to a foot, to
12 12 inch.

13 Q. So it's almost 1:6, correct?

14 A. Yeah, yeah.

15 Q. It's almost double. So if you
16 double it, you have got to halve the ratio?

17 A. Yes, yes.

18 Q. And that's a steep slope; too
19 steep for the ADA's -- too steep to comply
20 with the ADA regulations, correct?

21 A. Yes.

22 Q. And a slope that is twice the
23 ADA -- twice the steepness of what the ADA
24 recommends can present a problem for safety.
25 Would you agree about that?

1

2 the 12-foot distance up the ramp, correct?

3 A. Yes, correct.

4 Q. And there's a risk that they may
5 go backwards, correct? If they don't have
6 the power of --

7 A. Yes.

8 Q. -- a manual wheelchair to wheel
9 themselves up the 12 feet of this steepness.
10 There's a safety risk that they may go
11 backwards and hurt themselves, correct?

12 A. Yes, correct.

13 Q. They may fall?

14 A. Correct. Yeah, they may fall.

15 Q. They may hit their head, correct?

16 A. A lot of things can happen if they
17 fall, yes.

18 Q. Okay. So that's one of them. You
19 agree that's one of the risks?

20 A. Yes. It's a possibility.

21 Q. Okay. Now, pursuant with a
22 walker, let's say going down the ramp, it
23 can be just as dangerous, correct? Because
24 they're working -- they're going -- if it's
25 too steep going down the ramp, they're

1

2 working against gravity. Correct?

3

4

A. Yes, they're working against gravity.

5

6

Q. And they're being pulled down by gravity, right? Down the ramp?

7

8

9

10

11

12

A. Yes. I don't think the ADA -- I don't know the ADA calls for ramps for people with walkers, but if we're going ahead with applying the same rules on people with walkers and wheelchairs, then, yes, yes.

13

14

Q. This existing ramp in front of the store, Gio liquors, is not safe, agreed?

15

16

A. No. It's not ADA accessible or meant to be.

17

18

19

Q. Okay. And now, when you say it's not meant to be, how do you know what this ramp is meant for?

20

21

22

23

24

25

A. Because there was no requirement for them to provide an ADA-accessible route to this entrance of the store. This store has been in existence since the '20s, and that's the way it's been. Nobody raised the elevation, nobody lowered the elevation and

1

2 then raised it again, so they lost a
3 grandfathered condition --

4 Q. How do you know --

5 A. -- with the Department of
6 Buildings, and they did require them to put
7 in a ramp. That's a --

8 Q. Do you know for certain the date
9 this ramp was installed or constructed?

10 A. The date? No.

11 Q. You were assuming that this ramp
12 was constructed back in 1920, correct?

13 A. No, no, no. I didn't say the ramp
14 was constructed in 1920. I said the store
15 was in existence since 1920s.

16 Q. When was the ramp constructed?

17 A. I don't know. I don't have a
18 record.

19 Q. So if the ramp was constructed
20 after 1991, it has to comply with the 1991
21 ADA rules and regulations, correct?

22 A. After 1991, yes.

23 Q. Okay. Now --

24 A. Hold on a minute. If it -- if
25 it's a grandfathered condition and we're not

1

2 just the ramp.

3

The issue is not just the ramp.

4

The ramp and the entrances and the

5

clearances, the clearances inside the store,

6

pull side from the door, push side from the

7

door and so on and so forth.

8

Q. Okay. So let me see if I

9

understand. You do agree that the ramp is

10

not in compliance, correct?

11

A. Yes. The ramp is not in

12

compliance with ADA regulations.

13

Q. Okay. And it's not safe for

14

people with disabilities, correct?

15

A. No. It should not be used by

16

someone with a wheelchair.

17

Q. It's missing a handrail, and it

18

requires a handrail, correct?

19

A. According to ADA regulations, it's

20

missing a handrail.

21

Q. Okay. And the slope is too steep,

22

right? The slope is almost double what the

23

ADA recommends, correct?

24

A. Yes.

25

Q. And the landing is not level

1

2 because we've seen photographs of
3 measurements of the landing, and the landing
4 ranges from 15 -- between 15 and 16 inches
5 and up to 18 inches?

6 A. Yes.

7 Q. So you agree it's not level,
8 correct?

9 A. Correct.

10 Q. And so there's not a level resting
11 spot if someone is in a wheelchair; they
12 can't be --

13 A. Correct.

14 Q. They can't be certain if they stop
15 their wheelchair on the landing that their
16 wheelchair is going to stay put if the
17 landing is not level, agreed?

18 A. Agreed, yes.

19 Q. Okay. And then there's another
20 difference. There's a difference between
21 where the landing and 18 inches is, that
22 height from the sidewalk and the front door
23 entrance.

24 It's either a 2- to 4-inch
25 difference depending on where you're

1

2 standing on the landing, correct?

3 A. Correct.

4 Q. And we've seen that by the photos
5 of the two rulers. The T-square made by the
6 ruler. Agreed?

7 A. Agreed.

8 Q. Okay. Now, you testified that the
9 ADA is not just remedying defects in the
10 ramp that's in front of the store, correct?

11 A. Correct.

12 Q. You mentioned there are other
13 considerations, correct?

14 A. Correct.

15 Q. You mentioned the front entrance
16 door has some problems that need to be
17 fixed; is that correct?

18 A. Yes, correct.

19 Q. You're saying it has problems with
20 clearance, that there's not enough entrance
21 on the left or the right?

22 A. Correct.

23 Q. Okay. And you're saying, if you
24 fix the ramp without fixing the door, then
25 it's not compliant with the ADA. Is that

1

2 what you're saying?

3 A. Correct.

4 Q. Now, to fix the door, if there's
5 an electronic push button and the door
6 opens, like a door assist, does that solve
7 the problem of not having clearance by the
8 door?

9 A. The push button could. But it has
10 to be -- you don't have enough clearance on
11 the landing itself to clear the door while
12 it's opening even electronically.

13 Q. Well, this door pushes in. So is
14 it possible to clear a -- create a push
15 button where the door opens into the store?

16 A. As a commercial space, the door
17 should push out. It should not push in in
18 commercial store.

19 Q. Okay. This door pushes in,
20 correct?

21 A. This door pushes in, correct.

22 Q. The existing door -- the existing
23 door pushes in?

24 A. Yes, yes.

25 Q. So you're saying that's a

1

2 violation?

3 A. This is not at issue right here.

4 Q. I'm asking, is that compliant with
5 the code. Yes or no?

6 A. The New York City code? No.

7 Q. So now we're talking about
8 entrance for a wheelchair. If you have a
9 push button that automatically assists in
10 opening the door, that will help a disabled
11 person in the wheelchair enter the store,
12 correct?

13 A. Opening in? Yes. It will work.

14 Q. Okay. And it will make it easier
15 for a disabled person to go in and out of
16 the store, correct?

17 A. Yes.

18 Q. Okay. And that would be a
19 benefit, correct?

20 A. That will be a benefit --

21 Q. For disabled people, if they can
22 enter the store through a readily accessible
23 manner, right?24 A. Yes, even if you're pushing a
25 button and you have the door, still this

1

2 landing is not going to work.

3 Q. Okay.

4

5 A. -- which direction. And on a
6 ADA-compliant ramp, you need 5 feet by 5
7 feet, you need it turn around. And the
8 clearance is 5 feet by 5 feet. This 5 feet
9 by 5 feet radically affects the direction of
10 the door, which we said, okay, you can leave
11 it alone. But you still have to the change
12 the storefront.

13 Q. So let me ask you this: The
14 existing ramp, you've agreed we've
15 identified there's some unsafe features
16 about it, correct?

17 A. For people with wheelchairs, yes.

18 Q. People with wheelchairs, people
19 with walkers and people with crutches,
20 agreed? It's unsafe for those groups of
21 people, correct?

22 A. Anyone that would fall under the
23 ADA category, then, yes. It's not safe.

24 Q. Okay. Which, when we say "it's
25 not safe," let's focus right now on the
slope. And the slope is of a certain

1

2 steepness that we mentioned presents a risk
3 of physical injury to individuals, to
4 disabled individuals, correct?

5 A. Correct.

6 Q. We mentioned they can fall
7 backwards; they can fall forward. Correct?

8 A. Yes.

9 Q. And that can cause physical bodily
10 harm, correct?

11 A. Yes.

12 Q. Okay. And you would agree with me
13 that it would be an important goal to make
14 this ramp more safe. Would you agree with
15 that?

16 A. Making things better is a better
17 goal for everyone, but that doesn't make it
18 achievable.

19 Q. Okay. So you agree with me it
20 would be an important goal to make this
21 landing closer to level and more safe, yes?

22 A. Yes, yeah.

23 Q. You would agree with me it would
24 be an important goal to make this slope less
25 steep, and that way it would be more safe,

1

2 agreed?

3 A. Yes.

4 Q. And you agree with me that it
5 would be an important goal to add a handrail
6 to make it more safe, this ramp, agreed?

7 A. Agreed.

8 MR. BERKE: Okay. Now let's go to
9 an exhibit. It's going to be 17, the
10 proposed ramp.

11 (Whereupon, the aforementioned exhibit was
12 deemed marked as Plaintiff's 17 Exhibit for
13 identification as of this date.)

14 MR. BERKE: If you can scroll down
15 a little. Okay. And if you can zoom
16 in to that picture number 2 on the
17 left. So if we can make that so you
18 can see that mostly.

19 BY MR. BERKE:

20 Q. All right. Mr. Demetry, you
21 received this proposed architectural plan of
22 Marcia Eskenazi prior to writing your
23 report?

24 A. Yes, I did receive.

25 Q. And this is Plaintiff's 17.

1

2 intermediate landing at the corner that's
3 13 inches -- correct? -- in height?

4 A. Correct, yes.

5 Q. Okay. And that slope is
6 consistent with the ADA regulations,
7 correct?

8 A. No, it's not correct.

9 Q. And what is incorrect about this?

10 A. You're sloping down 7-inches and
11 you have a length of 6 feet, 10 inches and a
12 half. You're missing an inch and a half.

13 1:12, 1 down 12.

14 Q. Okay. So you're saying that inch,
15 it doesn't -- it comes close, but it's an
16 inch off?

17 A. Yeah. We made things better but
18 not correct.

19 Q. The ratio for the slope is close
20 to 1:12. It's just an inch off from 1:12?

21 A. Yeah. But on ADA, we don't round
22 them.

23 Q. Before -- before, you would agree
24 the existing ramp is double the steepness of
25 what the ADA recommends?

1

2 A. Yeah, yes.

3 Q. Okay. So here you're making a
4 point that shows that this is an inch off?

5 A. We made it much better.

6 Q. I'm saying -- just saying what
7 you're saying.

8 You're agreeing that you are
9 pointing out that this is an inch off from
10 what the ADA recommends of a slope of 1:12,
11 correct?

12 A. Correct.

13 MR. BERKE: Okay. Now, let's go
14 to picture one up top. Let's slide over
15 to the corner.

16 BY MR. BERKE:

17 Q. Mr. Demetry, you would agree that
18 making a change to the existing ramp to go
19 from the existing steepness of the slope,
20 which is almost double what the ADA
21 regulations state, to something that's
22 closer to 1:12 is an important step towards
23 safety. Would you agree with that?

24 A. Yes.

25 Q. Okay. And that -- and changing

1

2 Q. And it's a safer slope, correct?

3 A. Yes, correct.

4 Q. And it's safer than what's

5 existing, correct?

6 A. Yes.

7 Q. Okay. Now, at the end of this
8 ramp there is a handrail that curves. Do
9 you see that?

10 A. Yes.

11 Q. And that is not existing -- on the
12 current ramp as it exists, we don't have
13 that type of handrail, correct?

14 A. No, we don't.

15 Q. And is that handrail recommended
16 by the ADA?

17 A. Yes.

18 Q. And that's for safety, correct?

19 A. That's for people with a sight
20 disability, yes.

21 Q. Okay. And it's a safety addition,
22 correct?

23 A. Yes, yeah, yeah, yeah.

24 Q. So by adding this type of
25 handrail, it also makes the access route to

1

2 A. Correct.

3 Q. And a wheelchair, your average
4 wheelchair. Do you know what the width of
5 it is?

6 A. An average wheelchair?

7 Q. Yeah.

8 A. 29 inches. 28 inches, 30 inches.

9 Q. So if you have a landing that's 5
10 feet by 5 feet, right? 60 inches by
11 60 inches?

12 If you have a wheelchair, if a
13 wheelchair is 30-inches, it can fit in
14 easily and turn, correct?

15 A. Yes.

16 Q. Okay. And if you have a landing
17 that is less than 60 inches by 60 inches,
18 you'll have a little less space for a
19 wheelchair to turn, correct?

20 A. Correct.

21 Q. So if you have a landing that's
22 44 inches by 60 inches, you have a
23 wheelchair -- right? -- well, let's --
24 you'll have a wheelchair that will have to
25 maneuver within a width, the smallest width

1
2 of 44 inches, correct?

3 A. Yeah. But that doesn't make it
4 linear.

5 Q. I understand. But we're talking
6 now about space. A wheelchair can fit --

7 A. We can't apply -- we can't apply
8 common sense to these dimensions.

9 Like, my -- okay. If we're
10 applying ADA -- if we're applying ADA; but
11 if we're not applying ADA, then we can argue
12 common sense. What makes sense and what
13 doesn't.

14 Q. Okay. So when you -- you
15 mentioned the word "illegal" a few times,
16 correct?

17 A. Yes.

18 Q. And you mentioned in your report
19 that the proposed -- the proposed ramp by
20 Marcia Eskenazi is illegal?

21 A. Correct.

22 Q. Okay. So your wording of
23 "illegal" -- right? -- illegal verses legal
24 is what you mean to say is, does it strictly
25 comply with the ADA? Is that what you're

1

2 saying?

3 A. Yes.

4 Q. And so if the proposed ramp has a
5 landing of 44 by 60 inches, you are
6 testifying that it's illegal because it is
7 not strictly complying with the ADA
8 requirement of a 60-inch-by-60-inch ramp; is
9 that correct?

10 A. Correct.

11 Q. Okay. And you are making clear
12 that this proposed ramp is illegal because
13 it doesn't have, what you consider to be, a
14 wide enough passing space for wheelchairs,
15 correct?

16 A. No, not because it doesn't have
17 wide enough; it's because it doesn't comply.
18 Then I -- I dismiss something that's really
19 bad to make it better but not fully correct.

20 So ten years from now, five years
21 from now, someone else could come in and
22 pick up those measurement and then sue the
23 store again for having an -- a
24 less-than-compliant ADA-compliant ramp.
25 Same case. We didn't accomplish anything.

1

2 Q. Okay. And so the proposed ramp
3 has a handrail, right? That makes the ramp
4 safer than the existing ramp, correct?

5 A. Yes. Correct.

6 Q. And the proposed ramp has a
7 landing that is flat and level as compared
8 to the existing ramp, correct?

9 A. Correct.

10 Q. So we accomplished two things --
11 right? If the proposed ramp adds a
12 handrail, it makes it safer. If it has a
13 flat landing, it makes it safer. Correct?

14 A. Correct.

15 Q. And the proposed ramp doesn't have
16 such a steep slope as twice as steep as what
17 the ADA recommends. Can you agree that's an
18 improvement, correct?

19 A. Correct.

20 Q. That makes the ramp safer than the
21 proposed ramp, correct?

22 A. Correct.

23 Q. But you draw the line and you say
24 if it doesn't have strictly 5-foot-by-5-foot
25 landing, you're saying the proposed ramp

1

2 doesn't work. Is that your testimony?

3 A. Yes. It doesn't solve the issue.

4 Q. Okay. And now --

5 A. It works. But it doesn't solve
6 the issue.

7 Q. Okay. The issue is, number one,
8 will it be approved by regulatory agencies,
9 correct?

10 A. No. It would not be approved. No
11 way.

12 Q. So you're saying --

13 A. -- how it works --

14 Q. Hear me out. You're testifying
15 that there's no possible way that this
16 proposed ramp can be approved by a city
17 agency, the New York City Department of
18 Buildings or the New York City Department of
19 Transportation. Is that your statement?

20 A. Yes. They will not approve this.

21 Q. Okay. And you are reaching a
22 conclusion that they will not approve it,
23 and that is your opinion, correct?

24 A. That is my opinion and experience,
25 and I am sure of it. Why? Because for the

1

2 dimensions.

3

Q. You're sure of it. Okay.

4

5 So the issue that you take -- you
6 take issue with is that the landing, you
7 want to make sure, is big enough so that the
8 wheelchair has a turning radius, correct?

9

A. Correct.

10

11 Q. And a turning radius on a level
12 landing is not a safety issue, would you
13 agree? No one is going to fall -- no one is
14 going to fall --

15

16 A. No one is going to roll off it,
17 yes. That's correct.

18

19 Q. Okay. It's not the same issue,
20 safety issue, as a steep ramp that is twice
21 as steep as what the ADA recommends. Would
22 you agree with that statement?

23

A. Yeah. It's level. It's safer.

24

Q. Okay.

25

26 A. Someone decided with the Court in
27 2010 to pass this law. It's a federal law
28 that consider -- that's considered to be
29 safe. So I can't decide what's safe or not,
30 so I have to go by the numbers.

1

2 That's -- the code determination with the
3 Department of Buildings. Yes.

4 Q. Okay. So, after -- okay. So
5 someone submits -- I'm sorry.

6 For this proposed ramp to be
7 built, the Department of Transportation has
8 to give a recommendation, correct?

9 A. Mm-hmm.

10 Q. And then, also, the New York City
11 Department of Buildings has to approve it,
12 correct?

13 A. Correct.

14 Q. And that's the CCD1 form that you
15 mentioned, correct?

16 A. Correct.

17 Q. Where if you submit -- where if
18 someone submits their proposed plans and
19 they explain the goals of the plans, there's
20 a possibility that the New York City
21 Buildings Department will approve the
22 proposed plans, correct?

23 A. Yes. But we are asking for a
24 waiver to waive another section of the code.
25 Now we are -- first of all, the Department

1

2 of Buildings does not have authority to

3 alter or give any variances to the

4 dimensions on a ADA clearance. Why?

5 Because this is not a code issue; this is

6 law. This is a federal law. It's not under

7 their jurisdiction. What they can give you

8 permission for or a variance for is to go

9 beyond the 44 inches that's permanent

10 as-of-right for ADA purposes.

11 So you're going and asking them,

12 instead of 44, I need 50 inches. Why?

13 Because one, two, three, four. So they

14 accept that part. But if you go in and tell

15 them, okay, you know what, I'm going over 44

16 inches and I'm going on two streets because

17 that's a variance on its own and top of

18 that, I need to do my -- I need to have a

19 landing that's 44 inches by 60, they will

20 reject it. They have no jurisdiction over

21 the 44-by-60 dimension. It will go to

22 court, get an approval from a judge that you

23 can do a 44-by-60 and then come back to us

24 so we will give you variances for our own

25 code.

1

2 Q. Okay. So let me ask you this: If
3 Marcia Eskenazi, architect, changed her
4 proposed plan so it's a 5-foot-by-5-foot
5 landing, both in front of the store and at
6 the corner, then a variance -- a variance is
7 requested from the Department of
8 Transportation, it is possible that the
9 Department of Transportation can approve
10 that plan or recommend that plan. Agreed?

11 A. Yeah. Yes, agreed.

12 Q. And then if the landings are
13 changed to 5 foot by 5 foot, you would agree
14 that a waiver could be presented to the New
15 York City Department of Buildings to be able
16 to go further than 44 inches from the
17 building line and the Department of
18 Buildings can approve the proposed plan.
19 Agreed?

20 A. That's giving the applicant
21 variance to go on two streets, not one.
22 And --

23 Q. I'm asking, it's possible, right?
24 It's not --

25 A. That's a possibility, yeah.

1

2 Q. It's a possibility, there are
3 procedures --

4 A. -- eliminate the cost factor, yes,
5 there's a possibility.

6 Q. Okay. So as long as the proper
7 procedures are followed and the proper
8 documentation is provided, you would agree
9 there's a possibility that both the
10 Department of Transportation can approve
11 this proposed plan, correct?

12 A. Yes.

13 Q. And the Department of Buildings
14 can approve this proposed plan, correct?

15 A. Yes.

16 Q. So you would agree with me, it's
17 not impossible that a proposed architectural
18 plan to build a ramp that wraps around from
19 108th Street to 48th Avenue at this location
20 can be submitted and recommended and
21 approved, correct?

22 A. Correct. It is not impossible to
23 have such application.

24 Q. And the relevant authorities to
25 approve it would be the Department of

1

2 at this time on November 7th or later.

3

4 Q. So you determined that that
5 measurement of the distance between a
6 proposed ramp and the curb to determine how
7 much space was on the sidewalk is an
8 important measurement, but not an important
9 measurement for you to take.

10

Is that your testimony?

11

A. Yes.

12

13 Q. Okay. And it's an important
14 measurement because if this proposed plan is
15 going to get recommended by the Department
16 of Transportation, it's your testimony that
17 the Department of Transportation wants to
18 know how much space there is, correct? On
19 the sidewalk?

20

21 A. Of course. Of course, they will
22 need to know how much space there is.

23

24 Q. Okay. Now, you also mentioned
25 something new just now about a land
surveyor, correct?

26

A. Correct.

27

28 Q. And you're saying that's another
29 obstacle to getting this proposed plan in

1
2 important, and you knew about it for six
3 weeks, correct? The Department of
4 Transportation approving a proposed ramp, to
5 build a wraparound ramp at this corner
6 store?

7 You would agree with me that you
8 knew it would be important for the
9 Department of Transportation to review this
10 plan?

11 A. Yes.

12 Q. And you knew about it on November
13 7th, 2023?

14 A. I know about it on November 7th,
15 2023, yes.

16 Q. And you thought about it for the
17 six weeks until you wrote your report on
18 December 22nd, 2023?

19 A. Yes.

20 Q. Now, if I told you that the words
21 "department of transportation" are not in
22 your report; would that surprise you?

23 A. No.

24 Q. Okay. Did you think it might be
25 important to mention the Department of

1

2 Transportation if it is a hurdle and
3 difficulty? Do you think it would be
4 important to mention it in your report?

5 A. No. Because we're not here to --
6 I was looking at a proposed plan and saying
7 that this will fix all the issues. And the
8 proposed plan for the ramp, it does not fix
9 the issue.

10 So if that's like -- I'm not the
11 applicant on this. I'm not going to give a
12 rundown of the process how to get this
13 approved. I'm not hired to file for it.
14 What I was hired for was to evaluate: Is
15 this ramp compliant with ADA or not? No,
16 it's not.

17 Would the proposed ramp work or
18 does not work? Is it legal and not illegal?
19 And, no, it would not work.

20 Q. In your report -- in your report,
21 did you document that the existing ramp does
22 not comply with the ADA?

23 A. Yeah. On my report, we said that
24 it's not -- it's not made to be
25 ADA-accessible.

1

2

go back, would you be able to find the

3

word "advocate"?

4

THE REPORTER: I think you might

5

have heard -- I heard "applicant."

6

MR. BERKE: "Applicant"?

7

THE REPORTER: That's what I

8

heard.

9

THE WITNESS: Yes.

10

MR. MIZRAHI: I'm going to ask

11

that you lower your voice, please. If

12

we can just continue. We've wasted

13

enough time.

14

THE REPORTER: I can read the

15

question, but I think he said he's not

16

an "applicant."

17

MR. MIZRAHI: That's what I heard,

18

too, Madam Court Reporter.

19

MR. BERKE: We'll go forward.

20

BY MR. BERKE:

21

Q. Mr. Demetry, you would agree with

22

me that in your report, you don't mention

23

that a land survey is required as part of

24

the process for this proposed ramp to be

25

approved.

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Would you agree with me on that?

A. Yes. It's not mentioned.

Q. Okay. And you would agree with me that you didn't mention in your report about the possibility of a New York City Department of Buildings waiver. Agreed?

A. Agreed. Because I was not listing a roadmap how to approve this proposed ramp. That's not what I was discussing. What I was looking at for the ramp, it's not my application to approve.

Q. Did you not state in your report this conclusion: (As read) "Constructing such a ramp would create illegal conditions on the public situation endangering pedestrians and would not achieve the intended goal"?

A. Yes.

Q. So you considered -- by saying this ramp, proposed ramp would create illegal conditions, you were considering the possibility, could this proposed ramp be approved, correct?

MR. MIZRAHI: Objection to the

1

2 60 inches, you still need approval from the
3 New York City Department of Buildings,
4 correct?

5 A. Correct.

6 Q. And it would still need approval
7 from the Department of Transportation,
8 correct?

9 A. Correct.

10 Q. And there's a New York City
11 building code that talks about landings and
12 that are 5 feet by 5 feet, that would need
13 approval from the Department of Buildings
14 and the Department of Transportation,
15 correct?

16 A. Yes.

17 Q. There's a New York City building
18 code 3201.9, called the "Department of
19 Transportation approval."

20 Are you aware of that code?

21 A. Yes.

22 Q. And that says: (As read) "Any
23 encroachments on public right-of-way that
24 exceeds the limitation provided for in this
25 chapter shall require the approval of the

1

2 Department of Transportation."

3 Correct?

4 A. Correct.

5 Q. And in the New York City building
6 code 1101.3.5, the New York City building
7 code of 2022 spells out how to get a plan
8 approved, correct?

9 A. Correct.

10 Q. It spells out how to apply with
11 the Department of Transportation for a
12 recommendation, correct?

13 A. Correct.

14 Q. And so it spells out a possible
15 way of approval for this proposed plan by
16 Marcia Eskenazi, architect, correct?

17 A. Correct.

18 Q. Okay. And it's your opinion if
19 this proposed plan, the landings were
20 changed to 5 feet by 5 feet, would that
21 improve its chances of approval?

22 A. Yeah. If the issues we had
23 mentioned earlier are addressed, it would
24 improve the chances of the approval at least
25 as far as it will be concerned, and then you

1

2 can go --

3 Yeah. It improves it; it makes it
4 according to the ADA regulation or
5 requirement.

6 Q. Okay. Now, when you wrote your
7 report, did you take care to mention all the
8 applicable New York City Department of
9 Buildings rules and regulations?

10 A. Not section by section.

11 Q. So you didn't -- you didn't
12 include section 1101.3.5. that's of the 2022
13 New York City Department of Buildings that
14 spells out how to get a proposed plan
15 approved when you need to go into
16 encroachment onto the sidewalk public
17 right-of-way, correct?

18 A. No.

19 Q. Okay. And you didn't mention New
20 York City building code 1012.6 for ramp
21 landings, correct?

22 A. For what again?

23 Q. For ramp landings.

24 A. Ramp landings. No.

25 Q. Right. You agreed building code

1

2 1012.6 of the New York City building code
3 spells out the requirements for ramp
4 landings?

5 A. If I could read; I don't have it
6 in front of me, and I don't know it by
7 heart. So, yeah.

8 Q. Okay.

9 A. It sounds like the section is
10 right.

11 Q. And then, also in -- you would
12 agree that New York City building code 2022
13 has a section of 3201.9 --

14 A. Mm-hmm.

15 Q. -- that talks about if a ramp is
16 in excess of the allowable 44 inches in the
17 public right-of-way, then DOT, Department of
18 Transportation, approval is required.

19 You're aware of that section of
20 the building code?

21 A. Yes, yes.

22 Q. And you didn't mention that
23 section of the building code in your report,
24 correct?

25 A. Correct.

1

2

3

4

Q. And those sections that I've just cited, they talk about how to get a proposed plan approved, correct?

5

A. Correct.

6

7

Q. And you didn't mention those sections in your report, correct?

8

9

A. No. Because that wasn't what I'm trying to accomplish.

10

11

12

13

Q. Well, was part of your scope to figure out if the existing ramp doesn't comply with the ADA and if there are opportunities to create a compliant ramp?

14

15

MR. MIZRAHI: Objection to the form of the question.

16

Hany, you can respond.

17

18

THE WITNESS: Jason, I may respond you said?

19

20

MR. MIZRAHI: Yes, you can respond.

21

22

23

A. I was not supposed to design a ramp. I was supposed to look into the existing ramp and the proposed ramp.

24

BY MR. BERKE:

25

Q. So when you say that you were not

1

2 there is a possibility that this proposed
3 ramp could be approved.

4

Would you agree with that?

5

A. Yes.

6

Q. Now, if I were to tell you that on
7 48th Avenue, the distance from the building
8 line to the sidewalk is 15 feet, do you have
9 any reason to dispute that number?

10

A. No.

11

Q. If I were to tell you on 108th
12 Street, the distance from the building line
13 to the curb is 18 feet, would you have any
14 reason to dispute that number?

15

A. No.

16

Q. If there is a 5 foot by 5 foot --
17 I'm sorry.

18

A 5-foot-by-5-foot landing created
19 on the proposed ramp, if we start at 108th
20 Street, if we have a landing of that size
21 and there's 18 feet from the building line
22 to the corner, would you agree it's a math
23 problem where we do 18 feet minus 5? That
24 leaves us 13 feet from a proposed
25 5-foot-by-5-foot landing to the 108th Street

1

2 curb?

3 A. It would be less than 13 feet.

4 Q. Well, we have --

5 A. The curb, the curb is curbed at
6 the corner.

7 Q. So how much less would you
8 approximate?

9 A. I don't know, about 6 inches or
10 so.

11 Q. Okay. So if the building line is
12 18 feet on 108th Street to the curb and we
13 do a proposed landing of 5 feet by 5 feet,
14 then you're saying you will likely have
15 12 feet, 12 feet and 6 inches remaining for
16 the pedestrian traffic on the sidewalk?

17 A. Okay. I agree.

18 Q. Agreed. Okay.

19 Then if we go to 48th Avenue and
20 the curb -- I'm sorry -- the building line
21 to the curb is 15 feet and we have a landing
22 at the corner of 48th Avenue and 108th, then
23 we do the math problem of 15 feet minus 5,
24 gets us 10 feet to the curb. Correct?

25 A. A little less than 10 feet. Okay,

1

2 correct.

3

4 Q. A little less. You're saying by
about 6 inches, correct?

5

A. More or less, yes.

6

7 Q. So about 9 feet 6 inches for the
public to travel on the sidewalk, correct?

8

A. Yes.

9

10 Q. Now, are you aware that there's a
New York City Department of Transportation
11 manual that talks about how wide sidewalks
12 should be?

13

A. Yes.

14

15 Q. It's called "New York City
Department of Transportation Design Manual"?

16

A. Yes.

17

18 Q. And are you aware that they say
sidewalks should be 8 feet in width or the
19 greater number of what is half the width of
20 the sidewalk from the building to the curb?

21

A. Yes.

22

23 Q. So here on 108th Street, if we
have 18 feet from the street line to the
24 curb, half of that is 9 feet. Would you
25 agree?

1

2 A. Yes.

3 Q. And 9 feet falls within allowable
4 space for pedestrians to travel on the
5 sidewalk if we build a proposed landing
6 that's 5 feet by 5 feet in front of 4801
7 108th Street, correct?

8 A. Correct.

9 Q. And so the Department of
10 Transportation, if -- for this proposed plan
11 to be recommended, that's the calculation
12 the Department of Transportation would make
13 in that 9 feet of sidewalk, is that
14 sufficient space for the public? Agreed?

15 A. I have no clue. That's their job.

16 Q. Okay. And then on 48th Avenue, if
17 we have a building line to curb distance of
18 15 feet and we take half of that, which is 7
19 1/2 feet, would you agree?

20 A. Yes.

21 Q. Okay. So we do -- the building
22 line to the curb is 15 feet, and if a
23 proposed ramp is built with a
24 5-foot-by-5-foot landing, we do the math
25 problem of 15 minus 5 and we get to 10 feet

1
2 they come up with the 60 inches. It's not
3 60, it's definitely less than 60. But
4 that's where it projects out and then turns.
5 And that's why the ADA also has clearances
6 for under counters and under sinks, for the
7 feet, basically. That's where it comes
8 from.

9 Q. Okay. But your average wheelchair
10 could be able to navigate within --

11 A. Yes.

12 Q. -- this -- this dimension of
13 44-inches-by-60-inches landing, correct?

14 A. Correct.

15 Q. It's possible?

16 A. Yes. It is possible.

17 MR. BERKE: Okay. Okay. So we
18 can take down this.

19 And let's mark a new --

20 Plaintiff's 18.

21 (Whereupon, the aforementioned exhibit was
22 deemed marked as Plaintiff's Exhibit 18 for
23 identification as of this date.)

24 BY MR. BERKE:

25 Q. Mr. Demetry, you refer in your

1

2 report to New York City Department of
3 Buildings application number 420596778.

4 A. Yes.

5 Q. And does that refer to work done
6 at the store location of Gio liquors that
7 was approved on July 24th, 2012?

8 A. Yes.

9 Q. It was approved by the Department
10 of Buildings on July 24th, 2012?

11 A. Yes.

12 Q. And Plaintiff's 18 shows that the
13 application was submitted and approved on
14 July 24th, 2012?

15 A. Yes. It was submitted on the 23rd
16 but approved on the 24th, yes.

17 Q. Okay. It was submitted by an
18 applicant of record, Jorge Bosch of Bosch
19 Architecture.

20 A. Yes.

21 Q. It was submitted on behalf of the
22 owner of 4801 108th Street of that building?

23 A. Yeah.

24 Q. Okay.

25 MR. BERKE: And, Court Reporter,

1

2

can you scroll down?

3

BY MR. BERKE:

4

5

Q. On job type -- for 5, it says "job types." It was checked off, "alteration type two."

6

7

A. Okay.

8

Q. Do you agree?

9

A. Yes, correct.

10

11

12

13

14

Q. And it was submitted to the Department of Buildings because the Department of Buildings requires these type of applications for the type of work described in the application?

15

A. Yes.

16

17

MR. BERKE: And can you scroll down, Reporter, please.

18

19

20

Q. And this job application has a job description?

21

A. Yes.

22

23

24

25

Q. And you had reviewed the job description and you became familiar with it when you wrote your report of December 22nd, 2023?

1

2 A. Yes.

3 Q. And the job description states:

4 (As read) "Application filed to complete job
5 number 40122509444UG6, filed originally in
6 2001. Install security partitions with
7 bulletproof glass and HVAC unit on first
8 floor. No change of use, egress or
9 occupancy."

10 That's what it states, correct?

11 A. Correct.

12 Q. And this was an application for an
13 alteration at the store of the building,
14 correct?

15 A. Yes.

16 Q. And the job was to install
17 security partitions floor to ceiling within
18 the store?

19 A. Yeah. That's what it says here,
20 yes.

21 Q. And also install bulletproof
22 glass?

23 A. Yes.

24 Q. And when you did your inspection
25 of the interior of the store in

1

2 November 7th, 2023, did you visually observe
3 with your own eyes the security partitions
4 that went from the floor to the ceiling?

5 A. Yes.

6 Q. And did you observe the
7 bulletproof glass?

8 A. Yes.

9 Q. Did you observe the bulletproof
10 door? Did you know there was a bulletproof
11 door?

12 A. Yes, yes.

13 Q. And did you notice that the
14 security partitions from floor to ceiling
15 had converted the shape of the space
16 accessible to customers?

17 A. I don't know what was the
18 original. I didn't see it before.

19 Q. Okay. So if -- you never did an
20 investigation to see if the -- by adding the
21 security partitions in the interior of the
22 store, Gio liquors, if that cut off the
23 space accessible to customers; is that
24 correct?

25 A. I don't know if it did or did not.

1

2 I don't know what was prior --

3 Q. Okay. So if the installation of
4 the security partitions cut off
5 approximately 40 percent of the space
6 accessible to the customers, would you say
7 that was an alteration to the store?

8 A. Yes.

9 Q. Okay. Because the space
10 accessible to customers -- right? -- is
11 important in determining what access the
12 customers have, correct?

13 A. Yes.

14 Q. And it changes the selling space
15 of the store, correct? The addition of
16 partitions changes the selling space of the
17 store?

18 A. Yeah. This is a business strategy
19 or behavior, whatever the business owner
20 service they provide. Yeah, it changes the
21 behavior of the clients inside the store.
22 Okay. Yes.

23 Q. So you were inside the store on
24 November 7th, 2023. Do you have a picture
25 in your mind of what the interior of the

1

2 store looks like?

3 A. Yes.

4 Q. And do you remember seeing the
5 security partitions and the bulletproof
6 glass?

7 A. Yes.

8 Q. Can you tell me how far in
9 distance from, let's say, when you enter the
10 store, if you look, turn to the left and you
11 hit the left wall -- I mean, if you're
12 facing the left wall, how far in distance is
13 it from the wall to the left to the security
14 partition closest to the middle of the
15 store?

16 A. Once I step into the -- once I
17 step into the store, there was a door in the
18 front -- not once, that's like 20 feet in at
19 least, if not more, maybe like 25 feet in
20 the store just right ahead. And to the
21 left, there was a partition; and to the
22 right, there was a partition.

23 Q. So the available space for a
24 customer, how much width from partition to
25 partition?

1

2 A. It's about maybe -- I don't know.

3 Just side to side from number, it's like,

4 12, 13 feet, left to right and probably

5 around 25 feet deep, more or less.

6 Q. Okay. And if I told you the store

7 dimensions are 26 feet wide, would you

8 agree? The Gio store dimension is 20 feet

9 wide or 26 feet wide?

10 A. I don't think so. Because --

11 Q. Because you have a door. Right?

12 There's a door that goes upstairs?

13 A. Yeah.

14 Q. So what do you think are the

15 dimensions of the Gio Wine & Spirits store?

16 A. The property is -- I don't

17 remember how wide was the property, the

18 property is 25 or 26 feet as it is. You can

19 figure that's maybe 20 feet, maybe 21 feet,

20 19 feet. I don't know. I'm not sure

21 exactly the width of the store itself.

22 Q. So we can -- it might be 20 feet?

23 Was that a --

24 A. Okay. Give or take 20.

25 Q. Okay. And as you walk into the

1

2 store from the entrance, you said there's an
3 aisle for customers to walk into?

4 A. Yeah. There is an aisle.

5 Q. And you said that aisle goes
6 straight ahead for a distance?

7 A. Yeah. It goes in about maybe
8 20 feet.

9 Q. Okay.

10 A. From the floor in.

11 Q. And what's that width of the aisle
12 for the customers?

13 A. It starts about 12 or 13 feet, but
14 it gets a little narrow in the back. I
15 don't recall exactly. I didn't even measure
16 it. It could be like a good six feet or
17 something, five feet.

18 Q. You're saying the aisle for the
19 customers is five feet in width?

20 A. Could be five or six feet, yeah.
21 And that's a small sectional.

22 Q. On either side of that aisle are
23 the security partitions blocking off the
24 customers' access to the store, to the rest
25 of store?

1

2 A. Yes.

3 Q. Okay. And given the -- when you
4 were in the store and you looked at the
5 store dimensions, security partitions, how
6 do they allocate the space between the
7 customer and for store -- the store
8 personnel, what percentage of the total
9 space would you say is the division between
10 where the customers have access to and --
11 you know, with the partitions and then what
12 the store owner or the store personnel have
13 access to?

14 A. My -- I really don't know because
15 I didn't measure up the store. I didn't
16 even walk into -- behind the partition glass
17 to see what's behind it. So I can't have --
18 I'm describing the space that I was actually
19 in, and this is just numbers off how it
20 felt, not how it was measured because I
21 didn't measure it.

22 Q. Well --

23 A. Everything, every single bottle of
24 liquor is behind the partition glass. You
25 can't access anything. You can just go

1

2 input your order, and they prepare it and
3 bring it to you.

4

Q. Is it fair to say that most of the
5 space is devoted to the sales personnel and
6 the storage of liquor behind the partitions?

7

A. Yes, that's true.

8

Q. And would you say more than
9 60 percent of the space is devoted to the
10 storage of liquor and the sales personnel
11 behind the partitions?

12

A. I will assume 60 percent is okay
13 number. Yes.

14

Q. Okay. And that means only about
15 40 percent available for the customers,
16 correct?

17

A. Yes, that would be about
18 40 percent. As -- again, this is an
19 assumption.

20

Q. And if -- before the application,
21 July 24th, 2012, and before any construction
22 was started in the store, if it was open
23 space, then the partitions have reduced the
24 space for the customers. Is that agreed?

25

A. If it was open, then, yes, they

1

2 changed their business model and made it

3 less.

4

MR. BERKE: Okay. Now I'm going

5

to ask the court reporter, can we go to

6

a document called HPD and call it

7

Plaintiff's 19.

8

(Whereupon, the aforementioned exhibit was

9

deemed marked as Plaintiff's Exhibit 19 for

10

identification as of this date.)

11

BY MR. BERKE:

12

Q. Mr. Demetry, do you recognize this

13

as a New York City Department of Buildings

14

index card for 108th Street at the address

15

of 4801?

16

A. Yeah. It's not Department of

17

Buildings, it's Housing Preservation

18

department.

19

Q. Housing Preservation and

20

Development.

21

A. HPD, yes.

22

Q. And you see the date on this, it

23

says '36, 1936?

24

A. Yes, November 24, 1936. Yes.

25

Q. All right. So let's scroll down

1

2 if we can. This is Plaintiff's 19.

3

4 What we're looking at now, the
5 date on the bottom says November 24, 1936;
6 is that correct?

7

A. Yes, correct.

8

9 Q. And it looks like it was signed by
10 an Inspector Leahy, L-E-A-H-Y; is that
11 correct?

12

A. Yeah, it looks like it.

13

14 Q. And do you see it has the street
15 names, 48th Avenue and 108th Street?

16

A. Mm-hmm, yes.

17

18 Q. Do you recognize this as a
19 corner -- I'm sorry. Do you recognize this
20 as a picture layout of the building at 4801
21 108th Street?

22

A. Yes.

23

24 Q. And if you look at the entrance,
25 does that entrance on 108th Street look like
the entrance that's there today?

26

A. Yes.

27

28 Q. And do you see where it says
29 "grocery store"?

30

A. Yes.

1

2 Q. And that shows an open space in
3 this store?

4 A. Yes.

5 Q. And do you see red writing that
6 says "part removed"?

7 A. Yes.

8 Q. It has a date. And I don't know
9 if we can clarify that date. Does it look
10 like September 14, '38?

11 A. Yes.

12 MR. BERKE: And, Reporter, if you
13 can scroll down so he can see the rest
14 of the drawing.

15 BY MR. BERKE:

16 Q. Does it look like partitions were
17 removed in '38?

18 A. Yes.

19 Q. Okay. And so that store had open
20 space from 1938?

21 A. Yes. I mean, they made a kitchen
22 in the back.

23 Q. And they made a kitchen in the
24 back.

25 So if there's no other plans on

1

2 file with the New York City Department of
3 Buildings, could we infer that in 1938 there
4 was open space for the storefront -- for the
5 store at 4801 108th Street?

6 A. Yes.

7 Q. And then the application was first
8 made in 2001 to install security partitions?

9 A. If it stayed the same throughout
10 all these years, yes. In 2001, they started
11 the partitions part.

12 Q. In 2001, an application was filed
13 and approved on August 14, 2001, to start
14 building partitions?

15 A. Yes.

16 Q. And that was an Alteration Type 2
17 document that was filed with the New York
18 City Department of Buildings, correct?

19 A. Correct.

20 Q. And then construction took a while
21 and had -- and in July 24th, 2012, another
22 application was filed for the same type of
23 construction, correct?

24 A. Yeah. That application that was
25 put on the screen previously, that's to wrap

1

2 up and obtain sign-offs. Because in that
3 period of time, the Department of Buildings
4 changed the system from just paper system
5 into the BIS system, the Building
6 Information System.

7

8 So the first application cannot be
9 reinstated and reopened and signed off. So
10 that's why this is common that you would see
11 applications just to wrap it up and get it
12 signed off. That's why he filed it on
13 July 23rd, he got an approval on July 24th,
14 and that signed it off right away.

15

16 Q. Was that signed off on May 21st,
17 2013?

18

19 A. Yeah. So, probably, they had
20 extra work or whatever. They had to get a
21 contractor to get a new permit, whatever the
22 case is. I'm not going to speak for anyone.

23

24 Q. I'm saying, would you agree, if we
25 go back to the document that we were looking
at, it was signed off on May 21st, 2013?

26

27 A. Yes. Yeah, yeah, yeah.

28

29 Q. Okay.

30

31 MR. BERKE: We can put this one

1

2 down, Reporter.

3 BY MR. BERKE:

4 Q. Now, Mr. Demetry, you're aware
5 that in 2010, there were Americans with
6 Disabilities Act advisory guidelines issued?

7 A. Yes.

8 Q. And those went into effect
9 March 15, 2012?

10 A. Yes.

11 Q. And the application that was
12 submitted for work done at the Gio liquor
13 store in 2012 was submitted in July 23rd,
14 2012, and approved July 24th, 2012?

15 A. Yes.

16 Q. And so from March to July --
17 that's April, May, June -- that's four
18 months later after March 15, 2012?

19 A. Yes.

20 Q. So are you familiar with the 2010
21 ADA advisory guidelines section 202.4
22 regarding alterations affecting primary
23 function areas?

24 A. Yes.

25 Q. Do you have a copy of that in

1

2 front of you?

3 A. Of the guidance?

4 Q. Yes.

5 A. No, not right now. But I'm

6 familiar with it.

7 Q. If I read it to you, would you
8 recognize the wording of the document, or do
9 you want to see in front of you?

10 A. No, no. You can read it.

11 Q. So: (As read) "202.4, alterations
12 affecting primary function areas, in
13 addition to the requirements of 202.3, an
14 alteration that affects or could affect the
15 usability of or access to an area containing
16 a primary function shall be made so as to
17 ensure that to the maximum extent feasible,
18 the path of travel to the altered area,
19 including the restrooms, telephones and
20 drinking fountains serving the altered area,
21 are readily accessible to and usable by
22 individuals with disabilities, unless such
23 alterations are disproportionate to the
24 overall alterations in terms of cost and
25 scope as determined under criteria

1

2 established by the Attorney General."

3

4 And then it says: (As read) "In
5 existing transportation facilities and area
6 of primary function shall be defined under
7 regulations published by the Secretary of
8 the Department of Transportation or the
9 Attorney General."

10

11 Do you recognize that section of
12 the advisory guidelines?

13

14 A. Yes.

15

16 Q. So, it says: (As read) "An
17 alteration that affects the usability of a
18 primary function area."

19

20 Is the sales space of a liquor
21 store a primary function area?

22

23 A. Yeah.

24

25 Q. Is alteration of this store, filed
in July 23rd and approved on July 24th,
2012, with an application to alter the
primary function area of this store by
installing secure partitions from floor to
ceiling and installing security glass?

26

27 A. I cannot say that it fit --
28 altered it to the extent that's needed to

1

2 trigger this section. Because the job was
3 basically done in 2001, and then it was
4 wrapped up in July 2012, and it was reviewed
5 by a planning examiner in the Buildings
6 Department. This is not a professional
7 certification job; this is a regular
8 planning exam job.

9

10 So he looked at it. He looked at
11 the plans, and he accepted it with the cost
12 with whatever criteria. And then the
13 Department of Buildings signed it off, with
14 someone taking responsibility of inspections
15 on this application. So they are in
16 compliance with the approved plans on the
17 job.

18 Q. Well, are you aware that the New
19 York City Department of Buildings
20 considers -- well, I'm sorry. Let me
21 withdraw that.

22 Does the New York City Department
23 of Buildings consider a job complete when
24 it's signed off by the New York City
25 Department of Buildings?

A. Yes.

1

2 (As read) "If there's an alteration that
3 affects the usability of or access to an
4 area containing a primary function, the
5 alterations shall be made to the maximum
6 extent feasible so that the path of travel
7 to the altered area can be access -- readily
8 accessible and readily usable by individuals
9 with disabilities."

10 You -- so now I'm going to ask you
11 a question about that provision. "Maximum
12 extent feasible," what does that mean?

13 A. Maximum extent -- as far as I
14 understand it, maximum extent feasible to
15 the project.

16 There are certain criteria in the
17 building code that if you pass a certain
18 limit of the value of the proposed work
19 compared to the value of the building, then
20 you have to have everything in the code
21 applicable so --

22 Q. Let me ask you this -- let me ask
23 you this on that point:

24 202.4 says: (As read) "If an
25 alteration is made to a primary function

1

2 area, then the path of travel shall be made
3 readily accessible to and usable by
4 individuals with disabilities to the maximum
5 extent feasible."

6

7 What does that mean to make it
8 usable and accessible by individuals with
9 disabilities to the maximum extent feasible?

10

11 A. To the maximum extent feasible, if
12 it's -- if it's possible. The maximum -- if
13 there's a possibility of making this ADA
14 accessible route, then it has to be done.

15

16 Q. Okay.

17

18 A. And it's determined by the cost of
19 the job compared to the value of the
20 construction of the building.

21

22 Q. Okay. So let's take a look --
23 there was a filing with the Department of
24 Buildings in the year 2013 -- I'm sorry --
25 in the year 2012 in July that was approved
and was finally signed off in the year 2013,
agreed?

26

27 A. Agreed.

28

29 Q. Now, you agree that that was an
30 Alteration Type 2 document filed with the

1

2 Department of Buildings, correct?

3 A. Agreed that it's an alteration to
4 what again?5 Q. It was an Alteration Type 2 that
6 was filed.

7 A. Yes.

8 Q. With the Department of Buildings,
9 agreed?10 A. Yes. That's the type of
11 application you need, yes.12 Q. And you agreed that it involved
13 the usability of a primary function of the
14 area, agreed?

15 A. Yes, agreed.

16 Q. Okay. And now I'm asking you, the
17 ramp, the existing ramp, can that be
18 considered a path of travel to the store?19 A. Currently, it has to be a path of
20 travel to the store. That's the only path
21 of travel to the store.22 Q. Okay. And if there was a -- do
23 you agree with me on this point: If there
24 was alteration that affected the usability
25 or access to an area containing a primary

1

2 and says not is a disproportionate cost?

3 A. I don't have that cleared up.

4 Q. Okay. So one of the conditions
5 involves cost, correct?

6 A. Correct.

7 Q. And it's an evaluation and it's a
8 balancing test -- right? -- to see if the
9 costs to make the path of travel accessible
10 are disproportionate to the overall cost of
11 alterations, correct?

12 A. Correct.

13 Q. In 2012, when the application was
14 filed with the New York City Department of
15 Buildings, the type 2 alteration
16 application, do you know what the costs were
17 identified in that application?

18 A. 48,000 and change. I don't
19 remember.

20 Q. Would you agree that it was
21 \$48,690?

22 A. Yes.

23 Q. That was a cost affidavit, PDW3
24 cost affidavit filed with the Department of
25 Buildings for the project in July 2012?

1

2 it minus 600?

3 Q. So if I do the math.

4 Okay. 48,690 times point 20.

5 Would you agree that 9,738 is 20 percent of
6 48,690?

7 A. Yes, I agree.

8 Q. Okay. So the attorney general is
9 saying -- I'm sorry.

10 If the 2010 ADA advisory
11 guidelines state that if the cost is below
12 20 percent, it is not disproportionate,
13 agreed?

14 A. Yes, agreed.

15 Q. And so if \$9,600 is spent to make
16 the path of travel accessible, and that is
17 less than 20 percent, that makes it
18 20 percent or less of the total cost that
19 was spent on these alterations, agreed?

20 A. Agreed.

21 Q. Okay. In your report, you didn't
22 put any cost figures of what it would cost
23 to make the existing ramp more accessible
24 for people with disabilities, agreed?

25 A. Agree.

1

2 Q. Got it.

3 Are you aware of a provision in
4 the ADA that states that the date of an
5 alteration is the last date that it was
6 approved by a local building department?
7 Are you aware of that ADA advisory
8 guideline?

9 A. Yes.

10 Q. Okay. And here, the last date was
11 in the year 2013, that the application for
12 an Alteration Type 2 work was finally
13 approved by the New York City Department of
14 Buildings, correct?

15 A. Yes. Referencing another job
16 number that was previously approved for them
17 that they were completing it.

18 Q. So the -- according to the ADA,
19 the date that it was approved in March or
20 May of 2013 is the date that the ADA looks
21 as the compliance date, correct?

22 A. No, no. That's a sign-off date,
23 not approval date. Approval is approval of
24 the application. Sign-off is completion of
25 all work.

1
2 with the New York City Department of
3 Buildings rule where as-of-right there may
4 be a 44-inch encroachment onto the sidewalk,
5 correct?

6 A. This will not make the Department
7 of Buildings accept it. The code is --

8 Q. Say that again?

9 A. This will not make the Department
10 of Buildings accept it because there's a
11 limitation of 44 inches. Forget about the
12 limitation, because DOT will just agree that
13 DOT accepts the ramp with the 5 feet by 5
14 feet -- or no without the 5 feet -- that the
15 DOT accepts the ramp.

16 All right. Now we go back to the
17 Department of Buildings. The Department of
18 Buildings will never approve this ramp
19 because it doesn't comply with ADA
20 measurements, and this is not their
21 jurisdiction.

22 Q. So you're saying that it's never
23 going to happen; is that correct?

24 A. It will never going to happen
25 unless there's a federal court giving the

1

2 okay to modify this dimension to 44 inches
3 by 60.

4

Q. Okay. So there are two options:

5

It could be a 60-by-60-inch landings --

6

right? -- that could be submitted; or it

7

could be a proposed ramp with 43-by-60-inch

8

landings.

9

The decision is to be made by the

10

Department of Transportation and the

11

Department of Buildings, correct?

12

A. Correct.

13

Q. And it may be reviewed by a Court

14

at some time in the future, is what you're

15

saying, correct?

16

A. Yes, correct.

17

Q. And in your opinion, you don't

18

think a ramp -- a proposed ramp that's

19

60-by-60-inch landings will ever be approved

20

by the Department of Transportation or by

21

the New York City Department of Buildings or

22

by a federal court?

23

A. 60-by-60 landings, it has a

24

possibility, it has a chance to be approved.

25

60 by 44, the Department of

1

2 Buildings will not approve it unless a court
3 order comes in accepting this as ADA means.

4 Q. So you're saying in -- chances go
5 up and improve if the landings are changed
6 to be 60 inch by 60 inch, correct?

7 A. Yes.

8 Q. And you're saying the odds go up
9 for the Department of Transportation
10 approving it?

11 A. No. The Department of
12 Transportation is the Department of
13 Transportation. For both sections, I really
14 don't know because we did not go this far
15 with wrapping a ramp around any corner
16 building. And there's a reason why you
17 don't see them.

18 Q. When you say "we didn't go this
19 far" --

20 A. It's not feasible --

21 Q. Let me see if I understand when
22 you say "we didn't go this far." You mean
23 Sotir Associates in its past projects?

24 A. Yes.

25 Q. In your past projects, you're

1

2 saying you never submitted an application to
3 the Department of Transportation to build
4 a -- to get a recommendation for this type
5 of ramp?

6 A. For a ramp -- for a ramp wrapping
7 around a building on two streets? No.

8 Q. Okay.

9 A. No building owner --

10 Q. Did you ever -- did you, Sotir &
11 Associates, ever submit an application like
12 this to the New York City Department of
13 Buildings to get a ramp that wraps around
14 from one street to another street around a
15 corner?

16 A. No.

17 Q. Okay.

18 A. No building owner accepts the fees
19 that comes with this. Never. It's more
20 than the reconstruction of this whole store
21 start to end.

22 Q. Now, in your report that you
23 created on December 22nd, 2023, at that
24 time, you knew what the costs were of the
25 construction of the store, correct?

1

2 A. Of the store?

3 Q. Yeah. You said the construction
4 costs 48,000, correct?

5 A. Yeah, that was on the application.

6 Q. When you wrote your report, you
7 knew those costs, correct?

8 A. Yeah.

9 Q. And in your report, you never
10 specified that the costs of building the
11 proposed ramp will exceed the costs of
12 48,690, correct? You didn't write that in
13 your report.

14 A. No, we didn't.

15 Q. Now, when it comes to the words
16 "technically infeasible," does -- hold on.
17 I'm sorry. Let me withdraw that. Give me
18 one second.

19 When it comes to the word
20 "technically infeasible," that can mean
21 difficulty because of a structural issue,
22 correct?

23 A. Correct.

24 Q. But we don't have a structural
25 issue here, correct? We're not removing a

1

2 structural barrier to create the proposed
3 ramp, agreed?

4 A. For the ramp option, no, we're not
5 removing any structure. Yes, agreed.

6 Q. Okay. Here you had defined it as
7 technical infeasibility because you are of
8 the opinion that this proposed ramp will
9 never be approved by the Department of
10 Transportation or New York City Department
11 of Buildings; is that correct?

12 A. That's correct.

13 Q. And if this proposed ramp, the
14 landings are changed to 60 inches by
15 60 inches, do you still have the opinion
16 that it's technically infeasible for this
17 ramp to get built? The proposed ramp?

18 A. Yes.

19 Q. Okay. And that's because you're
20 saying it's a difficult process?

21 A. Yes.

22 Q. And you have not personally went
23 through that process; is that correct?

24 A. No. In this format, no.

25 Q. And Sotir & Associates has never

1

2 gone through this process, correct?

3 A. No.

4 Q. So you, nor Sotir & Associates,
5 has real world experience of going through
6 the process of trying to get a proposed
7 ramp, a ramp that wraps around the corner,
8 to be approved -- or recommended by the
9 Department of Transportation or approved by
10 the New York City Department of Buildings,
11 correct?

12 A. A ramp in this format, no.

13 Q. And if we change the format and we
14 made the ramp with landings of 60 inch by 60
15 inch, you personally don't have the
16 experience of going to the Department of
17 Transportation to ask for it to recommended,
18 correct?

19 A. Yeah, by -- when I said in this
20 format, I mean in this format of wrapping
21 around the building on both streets.

22 But we have the field experience
23 with DOT and the Department of Buildings
24 with variances and with projections more
25 than 44 inches and all that.

1

2 Q. And tell me, what project were you
3 working on where you had to go to the
4 Department of Transportation for a
5 recommendation for an encroachment on the
6 sidewalk?

7 A. We have construction -- we have
8 building fences that are encroaching and
9 everywhere in Bayridge and --

10 Q. What address?

11 A. -- Brooklyn.

12 Q. What address?

13 A. 78th Street, that's 35 78th
14 Street. We had to go through the Department
15 of Transportation for that.

16 Q. When you say "35 78th Street," 35
17 is the building number?

18 A. Yes. 78th Street is the street on
19 Bayridge, Brooklyn.

20 Q. And do you know what the cross
21 street is?

22 A. Shore Road, if I'm not mistaken.

23 Q. Okay.

24 A. No, it's not Shore Road. It's
25 Narrows.

1

2 Q. Narrows?

3 A. Narrows, yeah.

4 Q. And you submitted an application
5 to the Department of Transportation for
6 encroachment on the sidewalk?

7 A. Yes.

8 Q. And was it approved?

9 A. Yes.

10 Q. Okay. And did it take them six
11 months to approve it?

12 A. Yeah. It took a year and four
13 months.

14 Q. Okay. What period of time -- when
15 did you submit the application? What years?

16 A. No. I don't have details of the
17 dates because the job got a certificate of
18 occupancy, I believe, in 2019 or '20. So
19 it's between -- I would say between 2016 and
20 '18 or '19, the application.

21 Q. Okay. And was there ever another
22 project that you worked on to ask for --

23 A. There are a couple. Honestly
24 speaking, at this point, this is the first
25 one that jumped in my head.

1

2 Q. Okay. So do you remember another
3 experience or no?

4 A. I remember other experiences with
5 fences, not with -- there's no experiences
6 with ramps.

7 Q. Okay. So when you -- so how many
8 times, in general, have you submitted it to
9 the Department of Transportation for an
10 approval for encroachment on the sidewalk
11 for a fence?

12 A. I don't have a count, but it's
13 more than five.

14 Q. More than five.

15 And how many of those five were
16 approved by the Department of
17 Transportation?

18 A. They were approved four times.

19 Q. Okay. And one time. So one out
20 of five it was not approved?

21 A. I remember it was a fence that was
22 not approved, and we had to push it back.

23 Q. Was it eventually approved?

24 A. No, not that I know of. Let me
25 put it this way, maybe we did it afterwards,

1

2 not that I know of.

3 Q. It left your office?

4 A. No, it didn't leave the office.

5 The job got signed off and we're done. Our
6 contract was over. So if the owner pursues
7 it somehow, some other way, it's up to them.

8 Q. Okay. And what about any
9 applications to the New York City Department
10 of Buildings for a waiver? Have you
11 personally ever been involved in that?

12 A. Variances, yes.

13 Q. Okay. How many times, roughly?

14 A. Not a lot for so many different
15 reasons, so I don't have a count.

16 Q. Roughly. Can you give me like 10,
17 20?

18 A. At least 20.

19 Q. Okay. And how many times did you
20 successfully obtain a variance from the New
21 York City Department of Buildings?

22 A. I would say it's a 99-percent
23 success.

24 Q. Okay.

25 A. I can't measure this against that.

1

2 A. No. Because that doesn't mean
3 that I could comply with two aspects of the
4 ADA code, but I cannot provide a bathroom
5 inside; so it's okay if I leave out the
6 bathroom, just give me the entrances. No.
7 It -- they don't -- it doesn't work this
8 way.

9 Q. So to make something readily
10 accessible to the maximum extent feasible,
11 would you agree that means it doesn't have
12 to be 100 percent compliance, but something
13 a little less can still be to the maximum
14 extent feasible?

15 A. No.

16 Q. You don't agree?

17 A. I don't agree.

18 Q. Okay. You determined that, in
19 your conclusion, that constructing such a
20 proposed ramp would create illegal
21 conditions on the public sidewalk,
22 endangering pedestrians.

23 That was your statement, agreed?

24 A. Agreed.

25 Q. And that is -- you said that's a